

Article 75.

Tobacco Trust Fund

**§ 143-715. Policy; purpose.**

The General Assembly finds:

- (1) For many years, the State and its prosperity have been supported by its agricultural economy and particularly by the tobacco-related segment of the agricultural economy. The Master Settlement Agreement is expected to cause significant economic hardship upon the tobacco-related segment of the agricultural economy in that it is expected to result in reduced demand, sales, and prices for tobacco as an agricultural product.
- (2) Tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses are entitled to indemnification for the adverse economic effects in the State resulting from the Master Settlement Agreement, tobacco producers, allotment holders, and persons engaged in tobacco-related businesses are entitled to compensation for the economic losses resulting from lost quota in this State, and tobacco producers are entitled to compensation for the decline in value of tobacco-related personal property assets and declining market conditions in this State resulting from the Master Settlement Agreement, to the extent that funds are available in the Tobacco Trust Fund to address those purposes.
- (3) Even in the absence of the Master Settlement Agreement, the tobacco-related segment of the State's economy is experiencing severe economic hardship as it confronts a national decline in the use of, and demand for, tobacco products, which decline is expected to continue. At present, the tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses are facing an economic crisis that threatens their health and survival. Therefore, in addition to indemnification and compensation for losses in this State resulting from the Master Settlement Agreement, the public interest will be served by the funding of qualified agricultural programs that support, foster, encourage, and facilitate a strong agricultural economy in North Carolina. To the extent that funds are available in the Tobacco Trust Fund, expenditure of those funds to finance qualified agricultural programs is in the public interest.
- (4) It is a public purpose for these funds to be expended in this manner, and it is public service for these persons to accept these funds to the end that conditions of unemployment and fiscal distress may be alleviated or avoided, more stable local economies may be created, local tax bases may be stabilized and maintained, natural resources may be optimally used, and the general public may be benefited. (2000-147, s. 3.)

**§ 143-716. Definitions.**

The following definitions apply in this Article:

- (1) Commission. – The Tobacco Trust Fund Commission.
- (2) Compensatory programs. – Programs developed by the Commission to identify, locate, compensate, and indemnify tobacco producers, allotment holders, and persons engaged in tobacco-related businesses who have suffered actual

economic losses in this State due to lost quota, the decline in value of tobacco-related personal property assets, and declining market conditions resulting from the Master Settlement Agreement or declines in the tobacco-related segment of the State's economy.

- (3) Fund. – The Tobacco Trust Fund.
- (4) Master Settlement Agreement. – The settlement agreement between certain tobacco manufacturers and the states, as incorporated in the consent decree entered in the action of State of North Carolina v. Philip Morris, Incorporated, et al., 98 CVS 14377, in the General Court of Justice, Superior Court Division, Wake County, North Carolina.
- (5) National Tobacco Grower Settlement Trust. – The trust established by tobacco companies to provide payments to tobacco growers and allotment holders in 14 states for the purposes of ameliorating potential adverse economic consequences of likely reduction in demand, sales, and prices for tobacco as an agricultural product as a result of the Master Settlement Agreement.
- (6) Qualified agricultural programs. – Programs developed by the Commission to support and foster the vitality and solvency of the tobacco-related segment of the State's agricultural economy, particularly the segment adversely affected by the Master Settlement Agreement, with the objective of alleviating and avoiding unemployment, preserving, and increasing local tax bases, and encouraging the economic stability of participants in the State's agricultural economy. Examples of qualified agricultural programs include programs to finance the modernization of farming equipment, programs to finance the conversion of existing equipment to conform to environmental and other regulatory requirements, and programs to finance the conversion or replacement of equipment in order to cultivate crops that are more profitable than are currently being cultivated.
- (7) Tobacco product component business. – An individual, partnership, limited liability company, corporation, or other commercial entity that engages in the manufacture of component products for use in the manufacture of tobacco products.
- (8) Tobacco-related business. – An individual, partnership, limited liability company, corporation, or other commercial entity that provides products or services used directly in (i) the production of tobacco, or (ii) support of the business of the production or sale of tobacco. The term does not include the manufacturing of tobacco products or the sale of tobacco products at wholesale or retail.
- (9) Tobacco-related employment. – Employment in a tobacco-related business, or in the manufacturing of tobacco products or the component products used in the manufacture of tobacco products. The term does not include persons employed in the sale of tobacco products at wholesale or retail. (2000-147, s. 3.)

#### **§ 143-717. Commission.**

(a) Creation. – The Tobacco Trust Fund Commission is created. The Commission shall be administratively located within the Department of Agriculture and Consumer

Services but shall exercise its powers independently of the Commissioner of Agriculture and the Department. All administrative expenses of the Commission shall be paid from the Fund.

(b) Membership. – The Commission shall consist of 18 members. The Commission shall be appointed as follows: six members by the Governor, six members by the President Pro Tempore of the Senate, and six members by the Speaker of the House of Representatives. The members shall be appointed as follows:

- (1) The Governor shall make the following appointments:
  - a. A flue-cured tobacco farmer.
  - b. A flue-cured tobacco farmer.
  - c. A person in or displaced from tobacco-related employment.
  - d. An at-large appointee.
  - e. An at-large appointee.
  - f. An at-large appointee.
- (2) The President Pro Tempore of the Senate shall make the following appointments:
  - a. A flue-cured tobacco farmer.
  - b. A flue-cured tobacco farmer.
  - c. A burley tobacco farmer.
  - d. An at-large appointee.
  - e. An at-large appointee.
  - f. An at-large appointee.
- (3) The Speaker of the House of Representatives shall make the following appointments:
  - a. A flue-cured tobacco farmer.
  - b. A former flue-cured allotment holder who is not also a flue-cured tobacco farmer.
  - c. A burley tobacco farmer.
  - d. An at-large appointee.
  - e. An at-large appointee.
  - f. An at-large appointee.

It is the intent of the General Assembly that the appointing authorities, in appointing members, shall appoint members who represent the geographic, political, gender, and racial diversity of the State. It is the intent of the General Assembly that at least one-half of the members of the Commission be tobacco farmers.

Except as provided for the initial members under subsection (c) of this section, members shall serve four-year terms beginning July 1. No member may serve more than two full consecutive terms. Members may continue to serve beyond their terms until their successors are duly appointed, but any holdover shall not affect the expiration date of the succeeding term. Vacancies shall be filled by the designated appointing authority for the remainder of the unexpired term. A member may be removed from office for cause by the authority that appointed that member.

(c) Initial Membership; Staggering. – To provide for a staggered membership, the members initially appointed to the Commission shall be appointed to staggered terms. Of

the initial appointments to the Commission, the members initially appointed pursuant to sub-subdivisions (b)(1)a., (1)b., (2)d., and (3)d. of this section shall serve one-year terms ending on June 30, 2001. The members initially appointed pursuant to sub-subdivisions (b)(2)c., (2)e., (3)a., and (3)e. shall serve two-year terms ending on June 30, 2002. The members initially appointed pursuant to sub-subdivisions (b)(1)c., (1)d., (1)e., (2)b., and (3)c. of this section shall serve three-year terms ending June 30, 2003. The remaining members initially appointed pursuant to subsection (b) of this section shall serve four-year terms ending June 30, 2004.

(d) Officers. – The Commission shall elect from its membership a chair, vice-chair, and other officers as necessary for two-year terms beginning July 1 at the first meeting of the Commission held on or after July 1 of every even-numbered year. The vice-chair may act for the chair in the absence of the chair as authorized by the Commission.

(e) Frequency of Meetings. – The Commission shall meet at least quarterly each year and may hold special meetings at the call of the chair or a majority of members. The Governor shall call the initial meeting of the Commission.

(f) Quorum; Majority. – Ten members shall constitute a quorum of the Commission. The Commission may act upon a majority vote of the members of the Commission on matters involving the disbursement of funds and personnel matters properly before the Commission. On all other matters, the Commission may act by majority vote of the members of the Commission at a meeting at which a quorum is present.

(g) Per Diem and Expenses. – The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the members shall be paid from the Fund.

(h) Conflict of Interest. – Members of the Commission shall comply with the provisions of G.S. 14-234 prohibiting conflicts of interest, except that G.S. 14-234(a) shall not apply to an application for or the receipt of a grant or other financial assistance award by a member of the Commission from the Fund created under this Article, or an entity in which a member of the Commission has an interest, if both of the following conditions are met:

- (1) A member does not vote on, participate in the deliberation of, or otherwise attempt through his or her official capacity to influence the vote on, a grant or other financial assistance award by the Commission to the member.
- (2) The Commissioner of Agriculture determines that any award to a member is in accordance with general criteria adopted by the Commission for the distribution of funds from the Fund.

(i) Limit on Operating and Administrative Expenses. – All administrative expenses of the Commission shall be paid from the Fund. No more than three hundred fifty thousand dollars (\$350,000) may be used each fiscal year for administrative and operating expenses of the Commission and its staff, provided that the Commission may annually adjust the administrative expense cap imposed by this subsection, so long as that any cap increase does not exceed the amount necessary to provide for statewide salary and benefit

adjustments enacted by the General Assembly. (2000-147, s. 3; 2006-264, s. 68; 2015-241, s. 13.12.)

**§ 143-718. Powers and duties.**

The Commission shall have the following powers and duties:

- (1) To administer the provisions of this Article.
- (2) To develop compensatory programs and qualified agriculture programs, including guidelines and criteria for eligibility for and disbursement of funds, the forms of direct and indirect economic assistance to be awarded, and procedures for applying for and reviewing applications for assistance from the Fund. In developing guidelines and criteria for eligibility and disbursement of funds, the Commission may consult with and otherwise obtain assistance from the State and local offices of the Farm Service Agency and other agencies of the United States Department of Agriculture.
- (3) To provide financial assistance to eligible recipients, in carrying out compensatory programs and qualified agricultural programs.
- (4) To hire staff for the administration of the Fund.
- (5) To contract with other persons to assist in the administration of the Commission's programs.
- (6) To accept gifts or grants from other sources.
- (7) To adopt rules to implement this Article. (2000-147, s. 3.)

**§ 143-719. Tobacco Trust Fund; creation; investment; priority use.**

(a) Fund Established. – The Tobacco Trust Fund is established in the Office of the State Treasurer. The Fund shall be used for the purposes provided in this Article.

(b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer is the custodian of the Fund and shall invest the assets in accordance with G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the Fund become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year is carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the chair of the Commission, pursuant to the directives of the Commission.

(c) Priority Use of Funds. – As soon as practicable after the beginning of each fiscal year, the State Treasurer must certify in writing to the chair of the Commission the estimated amount of debt service anticipated to be paid during the fiscal year for special indebtedness authorized by the State Capital Facilities Act of 2004, Part 1 of S.L. 2004-179. The chair of the Commission must issue a warrant from the Fund to the General Fund for the lesser of (i) one-half of the amount certified by the Treasurer and (ii) the applicable percentage of the Fund's receipts for the current fiscal year. For fiscal years beginning before July 1, 2007, the applicable percentage is thirty percent (30%). For fiscal years beginning on or after July 1, 2007, the applicable percentage is sixty-five percent (65%). (2000-147, s. 3; 2004-179, s. 1.4.)

**§ 143-720. Benefits and administration of Fund for compensatory programs.**

(a) Funds held in the Fund may be expended on compensatory programs as provided in this section.

(b) The Fund may provide direct and indirect financial assistance, in accordance with criteria established by the Commission and to the extent allowed by law, to accomplish the following:

- (1) Indemnify tobacco producers, allotment holders, and persons engaged in tobacco-related businesses from the adverse economic effects in this State of the Master Settlement Agreement.
- (2) Compensate tobacco producers, allotment holders, and persons engaged in tobacco-related businesses for economic loss resulting from lost quota and compensate tobacco producers for the decline in value of tobacco-related personal property assets and declining market conditions resulting from the Master Settlement Agreement in this State.
- (3) Compensate individuals displaced from tobacco-related employment in this State as a result of the adverse economic effects of the Master Settlement Agreement.
- (4) Compensate tobacco product component businesses that are (i) adversely impacted by the Master Settlement Agreement and that (ii) need financial assistance to retool machinery or equipment or to retrain workers, in order to convert to the production of new products or nontobacco use of existing products, or to effect other similar changes.

(c) Only tobacco producers, persons engaged in tobacco-related businesses, individuals displaced from tobacco-related employment, and tobacco product component businesses in this State, and holders of North Carolina tobacco allotments are eligible to apply for and receive assistance pursuant to subsection (b) of this section. Direct payments made to tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses shall be based on losses resulting in 1998 and thereafter. Lost quota shall be a primary determinative factor in calculating the amount of compensable economic loss for tobacco producers, allotment holders, and persons engaged in tobacco-related businesses.

(d) The Commission shall determine the priority of awards among the categories in subsection (b) of this section and within each of those categories.

(e) Financial assistance awards shall be for no more than one year at a time. An award may be renewed annually, without limitation.

(f) The Commission may require applicants to provide copies of documents necessary to determine compensable economic loss.

(g) In no event shall the amount paid to a tobacco producer or allotment holder pursuant to this Article, when combined with the amount received through the National Tobacco Grower Settlement Trust, exceed the compensable economic loss of the producer or allotment holder.

(h) The Commission may consider the criteria used for National Tobacco Grower Settlement Trust payments and may correspond with the National Tobacco Grower Settlement Trust certification entity to ensure that tobacco farmers and allotment holders are treated fairly. (2000-147, s. 3.)

#### **§ 143-721. Benefits and administration of Fund for qualified agricultural programs.**

(a) Funds held in the Fund may be expended on qualified agricultural programs as provided in this section.

(b) In implementing qualified agricultural programs, the Commission shall endeavor to identify those areas of the tobacco-related segment of the State's economy in need of assistance to be provided by the Fund in order to assure the continued vitality and solvency of those areas. The Commission shall endeavor to select for funding qualified agricultural programs that will have the greatest favorable impact on the long-term health of the tobacco-related economy of the State.

(c) The benefits of qualified agricultural programs are not limited to persons suffering economic loss resulting from the Master Settlement Agreement, but these programs shall be designed to foster, support, and assist the tobacco-related segment of the agricultural economy.

(d) The Commission may solicit and accept proposals from agencies and departments of the State, including institutions of The University of North Carolina, local units of government, the federal government, and members of the private sector for qualified agricultural programs to be funded with money held in the Fund. (2000-147, s. 3.)

#### **§ 143-722. Reporting.**

(a) The chair of the Commission shall report each year by November 1 to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the chairs of the House and Senate Appropriations Committees, and the Fiscal Research Division regarding the implementation of this Article, including a report on funds disbursed during the fiscal year by amount, purpose, and category of recipient, and other information as requested by the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources. A written copy of the report shall also be sent to the Legislative Library by November 1 each year.

(b) Any non-State entity as that term is defined in G.S. 143C-1-1 that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of G.S. 143C-6-14. (2000-147, s. 3; 2004-196, s. 4; 2006-203, s. 99; 2008-187, s. 23; 2017-57, s. 14.1(rr).)

#### **§ 143-723. Open meetings; public records; audit.**

The Open Meetings Law (Article 33 of Chapter 143 of the General Statutes) and the Public Records Act (Chapter 132 of the General Statutes) shall apply to the Fund and the Commission, and the Fund and the Commission shall be subject to audit by the State Auditor as provided by law. The Commission shall reimburse the State Auditor for the actual cost of the audit. (2000-147, s. 3.)

#### **§ 143-724. Reserved for future codification purposes.**